APPENDIX

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SENATOR MITCH McCONNELL, *et al.*,

Plaintiffs,

v.

Civ. No. 02-582
(CKK, KLH, RJL)

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

NRA, *et al.*,

Plaintiffs,

v.

Civ. No. 02-581
(CKK, KLH, RJL)

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

ECHOLS, *et al.*,

Plaintiffs,

v.

Civ. No. 02-633
(CKK, KLH, RJL)

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

CHAMBER OF COMMERCE
OF THE UNITED STATES, *et al.*,

Plaintiffs,

v. Civ. No. 02-751
(CKK, KLH, RJL)

FEDERAL ELECTION
COMMISSION, *et al.*,

Defendants.

NATIONAL ASSOCIATION OF
BROADCASTERS,

Plaintiffs,

v. Civ. No. 02-753
(CKK, KLH, RJL)

FEDERAL ELECTION
COMMISSION, *et al.*,

Defendants.

AFL-CIO, *et al.*,

Plaintiffs,

v. Civ. No. 02-754
(CKK, KLH, RJL)

FEDERAL ELECTION
COMMISSION, *et al.*,

Defendants.

CONGRESSMAN RON PAUL, *et al.*,

Plaintiffs,

v.

Civ. No. 02-781
(CKK, KLH, RJL)

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

ORDER GRANTING MOTION TO INTERVENE
(May 3, 2002)

Pursuant to Rule 24(a)(1) of the Federal Rules of Civil Procedure and section 403(b) of the Bipartisan Campaign Reform Act of 2002 (BCRA or Act), Senators John McCain, Russell Feingold, Olympia Snowe and James Jeffords and Representatives Christopher Shays and Martin Meehan (movants) move to intervene in these consolidated actions to defend BCRA's constitutionality. While the defendants do not object to the motion, several of the plaintiffs (objectors)[1] oppose it on the ground that the movants "do not have the requisite Article III standing" to support intervention. Opp'n at 3 (capitalization altered). We disagree. Accordingly, and for the following reasons, the motion to intervene is granted.

[1] Specifically, Representative Mike Pence, Alabama Attorney General Bill Pryor, Libertarian National Committee, Inc., Alabama Republican Executive Committee, Libertarian Party of Illinois, DuPage Political Action Council, Jefferson County Republican Executive Committee, Christian Coalition of America, Inc., Club for Growth, Indiana Family Institute, National Right to Life Committee, Inc., National Right to Life Educational Trust Fund, National Right to Life Political Action Committee, Martin J. Connors and Barret Austin O'Brock oppose the movants' intervention.

Rule 24(a)(1) provides that "[u]pon timely application anyone shall be permitted to intervene in an action . . . when a statute of the United States confers an unconditional right to intervene." Fed. R. Civ. P. 24(a)(1). Section 403(b) of the Act, in turn, provides that

> [i]n any action in which the constitutionality of any provision of this Act or any amendment made by this Act is raised . . . any member of the House of Representatives . . . or Senate shall have the right to intervene either in support of or opposition to the position of a party to the case regarding the constitutionality of the provision or amendment.

2 U.S.C. § 437h note. Because the plaintiffs have challenged numerous provisions of the Act on constitutional grounds, section 403(b) plainly confers upon each and every one of the movants an unconditional statutory right to intervene in the consolidated actions now before us.

The objectors argue that the standing inquiry does not end with the satisfaction of Rule 24(a)(1). Under Article III of the United States Constitution, our "judicial Power" extends only to live "Cases" or "Controversies." U.S. Const. art. III. The D.C. Circuit has long held that "because an intervenor participates on equal footing with the original parties to a suit, a movant for leave to intervene . . . must satisfy the same Article III standing requirements as original parties." *Bldg. & Constr. Trades Dep't v. Reich*, 40 F.3d 1275, 1282 (D.C. Cir. 1994); *see S. Christian Leadership Conf. v. Kelley*, 747 F.2d 777, 779 (D.C. Cir. 1984); *see also Mausolf v. Babbitt*, 85 F.3d 1295, 1300 (8th Cir. 1996) ("An Article III case or controversy is one where all parties have standing, and a would-be intervenor, because he seeks to participate as a party, must have standing as well.")[2]

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[2] In *Diamond v. Charles*, 476 U.S. 54 (1986), the United States Supreme Court held that an intervenor seeking to continue its suit in the absence of the party on whose side intervention was permitted must demonstrate that it fulfills the standing

Building & Construction Trades and *Kelley* address the question of Article III standing under Rule 24(a)(2) as opposed to Rule 24(a)(1). To date, neither the Supreme Court nor the D.C. Circuit has specifically addressed whether an Article III standing analysis is as appropriate in the Rule 24(a)(1) context as it is in the Rule 24(a)(2) context. The movants suggest that "[t]he argument for a relaxed rule of standing where the intervenor has an unconditional statutory right to participate seems . . . stronger than the argument for relaxed standing in the (a)(2) context." Movants' Reply at 5 n.3. However, we see no need in this case to address that distinction or to resolve the question whether the movants must satisfy the constitutional requirements of standing—i.e., that they have suffered or will suffer "an injury in fact" which is "concrete and particularized," "actual or imminent," "fairly . . . trace[able] to the challenged action" and "redress[able] by a favorable decision," *Lujan v. Defenders of Wildlife*, 504 US. 555, 560-61 (1992) (internal quotations omitted)—because we believe, as discussed below, that the movants have satisfied those requirements in any event.

The movants allege that

> [a]s federal officeholders and candidates for, or potential candidates for, election to federal office, they are among those whose conduct the Act regulates, and among those whom the Act seeks to insulate from the actual or apparent corrupting influence of special interest money. They want to run in elections, participate in a political system, and serve in a government in which all participants

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requirements of Article III. *See id.* at 68. Nonetheless, the Court reserved for another day the broader question of whether an intervenor must have Article III standing where the party on whose side intervention is sought remains in the litigation. *See id.* at 68-69. The circuits are split on that issue. *See Ruiz v. Estelle*, 161 F.3d 814, 831-32 (5th Cir. 1998) (D.C., Seventh and Eighth Circuits require intervenors to have Article III standing while Second, Fifth, Sixth, Ninth and Eleventh Circuits do not).

> comply with the reasonable contribution restrictions and other federal campaign finance regulations that the Act imposes in order to stop evasion and to prevent actual and apparent corruption. If any of the reforms embodied in the Act are struck down, . . . [the] movants will once again be forced to attempt to discharge their public responsibilities, raise money, and campaign in a system that [they believe to be] significantly corrupted by special-interest money.

Mem. in Supp. of Mot. to Intervene at 3-4; *see Lujan*, 504 U.S. at 561 ("At the pleading stage, general factual allegations of injury. . . may suffice, for on a motion to dismiss we presume that general allegations embrace those specific facts that are necessary to support the claim." (internal quotations and alteration omitted)); 7C Charles Alan Wright et al., *Federal Practice and Procedure* § 1914, at 418 (2d ed. 1986) (intervention pleading "is construed liberally in favor of the pleader and the court will accept as true the well-pleaded allegations" therein). These allegations are sufficient to support Article III standing.

The objectors' contrary position that (1) the movants "have not shown that they have an interest distinct from that of every other citizen," Opp'n at 8; (2) the movants have no legally protected interest "as sponsors and supporters" of the Act or "in upholding an unconstitutional statute," *id* at 8, 10; and (3) any injury the movants suffer cannot be redressed by a favorable decision, *see id.* at 12, is, simply stated, without merit.

First, as opposed to members of the general public, the movants have a concrete, direct, and personal stake-as candidates and potential candidates—in the outcome of a constitutional challenge to a law regulating the processes by which they may attain office. *See Buchanan v. FEC*, 112 F. Supp. 2d 58, 65 (D.D.C. 2000) ("Precluding candidates from challenging [election] rules under the FECA would leave few others to do so . . . . [I]t is relatively self-evident that the people who have the most to gain and lose from the

criteria governing [the electoral process] are the candidates themselves."); *see also Vote Choice, Inc. v. DiStefano*, 4 F.3d 26, 37 (1st Cir. 1993) ("[A]n impact on the strategy and conduct of an office-seeker's political campaign constitutes an injury of a kind sufficient to confer standing." (citing *Buckley v. Valeo*, 424 U.S. 1, 12 & n.10 (1976) (per curiam))). The objectors have cited no case law to the contrary.

Second, notwithstanding the objectors' assertions, *see* Opp'n at 8-9, the movants do not seek to vindicate a "sponsorship" interest in the Act. Nor are they precluded from intervening to *defend* (rather than challenge) the Act. In arguing that "no litigant has a legally protected interest in upholding an unconstitutional statute," *id.* at 10, the objectors conflate the threshold issue of standing with the merits of the case and ignore the fact that the BCRA provisions the movants seek to defend are presumed constitutional until proven otherwise. *See United States v. Morrison*, 529 U.S. 598, 607 (2000) ("Due respect for the decisions of a coordinate branch of Government demands that we invalidate a congressional enactment only upon a plain showing that Congress has exceeded its constitutional bounds"). Moreover, a movant may intervene in support of government defendants where "it will be injured in fact by the setting aside of the government's action it seeks to defend," the "injury will have been caused by that invalidation" and "the injury would be prevented if the government action is upheld." *Am. Horse Prot. Ass'n v. Veneman*, 200 F.R.D. 153, 156 (D.D.C. 2001); *see also Meek v. Metro. Dade County*, 985 F.2d 1471, 1480 (11th Cir. 1993) (movants seeking to intervene in defense of "election system that governed their exercise of political power" sufficiently "alleged a tangible actual or prospective injury" under *Lujan*); *Marshall v. Meadows*, 921 F. Supp. 1490, 1492 (E. D. Va. 1996) (U.S. Senator seeking intervention to defend constitutionality of state election law permitted to intervene because he had "a vital interest in a procedure through which he [sought] election").

Finally, the injury the movants allege here—that they will be forced to raise money in a corrupt system *in the event the Act is struck down*—plainly would be redressed by a favorable decision *upholding* the Act's provisions. Accordingly, because it is clear from the face of the pleadings that the movants have an unconditional statutory right-and Article III standing—to seek such a decision, it is this 3rd day of May, 2002 hereby

ORDERED that the objectors' request for an oral hearing on the motion to intervene is denied, *see Sam Fox Publ'g Co. v. United States*, 366 U.S. 683, 693-94 (1961) (district court had discretion to decide motion to intervene without hearing when result was clear from face of application); and it is further

ORDERED that the motion to intervene is granted.

SO ORDERED.

KAREN LeCRAFT HENDERSON
United States Circuit Judge

COLLEEN KOLLAR-KOTELLY
United States District Judge

RICHARD J. LEON
United States District Judge